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Attorneys for Plaintiff, Calvin Smith

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CALVIN SMITH, individually, and
on behalf of other members of the
general public similarly situated,

Plaintiff,

vs.

UNIRUSH, LLC d/b/a UNIRUSH
FINANCIALSERVICES, RUSH
COMMUNICATIONS, LLC,
RUSH COMMUNICATIONS of
NYC, INC., META FINANCIAL
GROUP, INC., and METABANK,

Defendant.

Case No.

CLASS ACTION COMPLAINT

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*) and
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*)
- (3) Violation of Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*)
- (4) Negligence
- (5) Fraud and Misrepresentation
- (6) Unjust Enrichment
- (7) Breach of Contract
- (8) Conversion
- (9) Breach of Fiduciary Duty

Jury Trial Demanded

1 Plaintiff Calvin Smith (“Plaintiff”), individually and on behalf of all other
2 members of the public similarly situated, allege as follows:

3 **NATURE OF THE ACTION AND PARTIES**

4 1. This action is brought by Plaintiffs, individually and on behalf of a
5 class of similarly situated holders of a RushCard, a prepaid Visa card promoted
6 and sold through Defendants UniRush LLC d/b/a UniRush Financial Services,
7 Rush Communications, LLC, Rush Communications of NYC, Inc. (collectively,
8 “Rush”) and issued by Meta Financial Group, Inc. and MetaBank (collectively,
9 “MetaBank”). Plaintiffs seek damages and injunctive relief based upon the
10 unlawful conduct of Defendants in denying such account holders the ability to
11 obtain funds in their accounts and in misappropriating funds held in the RushCard
12 accounts.

13 2. As a result of Defendants’ bad faith, and unfair and unlawful conduct,
14 Plaintiff and Class members have been prevented from accessing their protected
15 assets to purchase items as basic as food, clothing and shelter. Defendants have
16 converted some monies for their own use and have unlawfully imposed fees and
17 charges on Plaintiffs and Class members.

18 3. Plaintiffs and Class members seek damages, exemplary and punitive
19 damages where appropriate and allowed, and an injunction enjoining the
20 continuation of Defendants’ unlawful conduct, restitution and disgorgement.

21 4. Defendant UniRush LLC d/b/a UniRush Financial Services, is a
22 Delaware limited liability company with its principal place of business located in
23 Cincinnati, Ohio.

24 5. Defendant Rush Communications, LLC, is a Delaware limited
25 liability company with its principal place of business in New York, New York.

26 6. Defendant Rush Communications of NYC, Inc., is a Delaware
27 corporation with its principal place of business in New York, New York.
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1 7. According to the website, www.rushcommunications.com, “Rush
2 Communications” is the holding company for UniRush LLC d/b/a UniRush
3 Financial Services.

4 8. Defendant Meta Financial Group, Inc., is a Delaware limited
5 liability company with its principal place of business in Sioux Falls, South
6 Dakota.

7 9. Defendant MetaBank is a federally chartered savings bank with its
8 headquarters in Sioux Falls, South Dakota.

9 10. According to the website, www.metafinancialgroup.com, Meta
10 Financial Group, Inc. is the holding company for MetaBank.

11 11. Whenever reference in this Complaint is made to any act of
12 Defendants, the allegation shall be deemed to mean that the officers, directors,
13 agents, representatives, subsidiaries, affiliates and employees of the Defendants
14 did or authorized the act while actively engaged in the management, direction, or
15 control of the affairs of the corporate Defendant, and while acting within the
16 course and scope of their employment.

17 **NATURE OF THE CASE & COMMON ALLEGATIONS OF FACT**

18 12. According to the Federal Deposit Insurance Corporation,
19 approximately 17 million Americans are considered “unbanked” as they are
20 without bank accounts. Another 58 million are “underbanked,” meaning they lack
21 access to traditional banking services, from check cards to saving accounts.

22 13. In January of 2003, Rush began offering the RushCard to consumers
23 throughout the country. The RushCard is a prepaid VISA card currently issued by
24 MetaBank pursuant to a license from Visa USA, Inc.

25 14. According to its website, the RushCard was established to help those
26 Americans who did not have access to traditional banking services by providing
27 them with financial services. RushCard was established with a belief that “every
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1 American should have access to an affordable place to keep their hard-earned
2 money – one that’s safe and convenient.”¹

3 15. The RushCard may be used online, in stores or anyplace one might
4 use a normal debit card, which makes it more convenient than cash or checks.
5 Account holders may access their funds through ATM machines and load money
6 onto the card at various retail locations. 24. The RushCard allows account holders
7 to have their employment wages directly deposited to the card. In fact, Rush
8 advertises that funds directly deposited to the RushCard will be available to the
9 account holder two days sooner than if the direct deposit was made to a traditional
10 banking account.

11 16. RushCard charges account holders fees such as monthly fees, ATM
12 withdrawal fees, transaction fees, balance inquiry fees, bank counter withdrawal
13 fees, and fees for inactive accounts.

14 17. On or about October 11, 2015, some RushCard customers received
15 notice, by text message, that RushCard would be updating its system from 3 a.m.
16 to 8 a.m. ET on October 12, 2015, during which time customers would be unable
17 to access their accounts, for funds or information.

18 18. Unfortunately, the “temporary” loss of access to accounts lasted
19 longer than the expected five hour period. The system remained down, with
20 customers locked out, for many days. Several customers still have not regained
21 access.

22 19. Plaintiff requested that a new card be sent to him, and it took him over
23 two months to receive his card, during which time he had no access to the funds
24 that were in his account.

25 20. Once Plaintiff finally received a new card, his card would not activate
26 through the systems activation line. Plaintiff, and customers similarly situated, has

27 ¹ <https://www.rushcard.com/About-Us?clicksource=learnmorebutton> (accessed April
28 7, 2015).

1 contacted the customer service line a number of times to speak with supervisors
2 about getting access to the funds in his account, and activating his card. On each
3 occasion no supervisor was able to help Plaintiff at any time.

4 21. For over three months, Plaintiff was unable to access the funds in his
5 account, and was unable to pay his household bills that he needed to support his
6 family.

7 22. Plaintiff was routinely denied access to his own funds, was denied the
8 promise of unlimited transactions and withdrawals, and was damaged by
9 Defendant's false representations. Plaintiffs and Class Members were fraudulently
10 induced into purchasing RushCards and depositing money into their RushCard
11 accounts because they were lead to believe their funds would be "safe and
12 protected" with unhindered access to these monies.

13 23. The aforementioned representations are objectively false, and
14 constitute a false advertisement under Cal. Bus. & Prof. Code §§ 17500 et. seq.,
15 and an unlawful, unfair, or deceptive business practices under Cal. Bus. & Prof.
16 Code §§ 17200 et. seq.

17 24. Defendant's violations of the law include, but not limited to, the false
18 advertising, marketing, representations to consumers in California that their
19 money will be accessible to them once placed in a Rushcard account.

20 25. On behalf of the class, Plaintiff seeks an injunction requiring
21 Defendant to cease advertising and withholding immediate access by consumers
22 to their accounts and an award of damages to the Class Members, together with
23 costs and reasonable attorneys' fees.

24 **JURISDICTION AND VENUE**

25 26. This class action is brought pursuant to Federal Rule of Civil
26 Procedure 23.

27 27. This matter is properly venued in the United States District Court for
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1 the Central District of California, in that Defendant does business in the Central
 2 District of California and has its principal place of business and headquarters
 3 within this district. A substantial portion of the events giving rise to Defendant's
 4 liability took place in this district.

5 28. There is original federal subject matter jurisdiction over this matter
 6 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb.
 7 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides for the
 8 original jurisdiction of federal courts in any class action in which at least 100
 9 members are in the proposed plaintiff class, any member of the plaintiff class is a
 10 citizen of a State different from the State of citizenship of any defendant, and the
 11 matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interests and
 12 costs.

13 29. In the case at bar, there are at least 100 members in the proposed Class
 14 and Sub-classes, the total claims of the proposed Class members are in excess of
 15 \$5,000,000.00 in the aggregate, exclusive of interests and costs, and Plaintiff seeks
 16 to represent a nationwide class of consumers, establishing minimum diversity.

17 **CLASS ACTION ALLEGATIONS**

18 30. Plaintiff brings this action, on behalf of himself and all others
 19 similarly situated, and thus, seeks class certification under Federal Rule of Civil
 20 Procedure 23.

21 31. The class Plaintiff seeks to represent (the "Class") is defined as
 22 follows:

23 All consumers residing in California, who held a
 24 RushCard and between the applicable statute of
 25 limitations and the present, were denied access to their
 accounts and funds.

26 As used herein, the term "Class Members" shall mean
 and refer to the members of the Class described above.

27 32. Excluded from the Class are Defendant, its affiliates, employees,
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agents, and attorneys, and the Court.

33. Plaintiff reserves the right to amend the Class, and to add additional subclasses, if discovery and further investigation reveals such action is warranted.

34. Upon information and belief, the proposed class is composed of thousands of persons. The members of the class are so numerous that joinder of all members would be unfeasible and impractical.

35. No violations alleged in this complaint are contingent on any individualized interaction of any kind between class members and Defendant.

36. Rather, all claims in this matter arise from the identical, false, affirmative written statements that the services would be provided for Class Members', when in fact, such representations were false.

37. There are common questions of law and fact as to the Class Members that predominate over questions affecting only individual members, including but not limited to:

- (a) whether Defendants owed duties to Plaintiffs and the proposed classes, the scope of those duties and if they breached those duties;
- (b) whether Defendants' conduct was unfair or unlawful;
- (c) whether Defendants breached their contracts with Plaintiffs and the proposed classes;
- (d) Whether Defendant violated California Bus. & Prof. Code § 17200, *et seq.*, California Bus. & Prof. Code § 17500, *et seq.*, and California Civ. Code § 1750, *et seq.*;
- (e) Whether Defendant violated California Bus. & Prof. Code § 17200, *et seq.*, California Bus. & Prof. Code § 17500, *et seq.*, and California Civ. Code § 1750, *et seq.*;
- (f) Whether Plaintiff and Class Members are entitled to equitable

and/or injunctive relief;

(g) Whether Defendant's unlawful, unfair, and/or deceptive practices harmed Plaintiff and Class Members; and

(h) The method of calculation and extent of damages for Plaintiff and Class Members.

38. Plaintiff is a member of the class he seeks to represent

39. The claims of Plaintiff are not only typical of all class members, they are identical.

40. All claims of Plaintiff and the class are based on the exact same legal theories.

41. Plaintiff has no interest antagonistic to, or in conflict with, the class.

42. Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member, because Plaintiff was unable to access his personal funds during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions concerns the same business practices described herein irrespective of where they occurred or were experiences. Plaintiff's claims are typical of all Class Members as demonstrated herein.

43. Plaintiff will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent himself and the class.

44. Common questions will predominate, and there will be no unusual manageability issues.

FIRST CAUSE OF ACTION

Violation of the California False Advertising Act

(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)

45. Plaintiff incorporates by reference each allegation set forth above.

46. Pursuant to California Business and Professions Code section 17500,

1 *et seq.*, it is unlawful to engage in advertising “which is untrue or misleading, and
2 which is known, or which by the exercise of reasonable care should be known, to
3 be untrue or misleading...or...to so make or disseminate or cause to be so made or
4 disseminated any such statement as part of a plan or scheme with the intent not to
5 sell that personal property or those services, professional or otherwise, so
6 advertised at the price stated therein, or as so advertised.”

7 47. California Business and Professions Code section 17500, *et seq.*’s
8 prohibition against false advertising extends to the use of false or misleading
9 written statements.

10 48. Defendant misled consumers by making misrepresentations and
11 untrue statements about consumers having regular access to their funds in order to
12 solicit these transactions.

13 49. Defendants represented that RushCard customers would have full
14 access to the funds in their accounts, except for a noticed 5-hour period on October
15 12, 2015. Defendants also represented that funds in RushCard accounts would be
16 secure and protected

17 50. Defendant knew that their representations and omissions were untrue
18 and misleading, and deliberately made the aforementioned representations and
19 omissions in order to deceive reasonable consumers like Plaintiff and other Class
20 Members.

21 51. As a direct and proximate result of Defendant’s misleading and false
22 advertising, Plaintiff and the other Class Members have suffered injury in fact and
23 have lost money or property. Plaintiff reasonably relied upon Defendant’s
24 representations, and was deprived of the funds in his RushCard account for over
25 three months, and therefore Plaintiff and other Class Members have suffered injury
26 in fact.

27 52. Plaintiff alleges that these false and misleading written
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1 representations made by Defendant constitute a “scheme with the intent not to sell
2 that personal property or those services, professional or otherwise, so advertised
3 at the price stated therein, or as so advertised.”

4 53. Defendant advertised to Plaintiff and other putative class members,
5 through written representations and omissions made by Defendant and its
6 employees, that the interest would be lower.

7 54. Thus, Defendant knowingly made such false representations to
8 Plaintiff and other putative class members..

9 55. The misleading and false advertising described herein presents a
10 continuing threat to Plaintiff and the Class Members in that Defendant persists and
11 continues to engage in these practices, and will not cease doing so unless and until
12 forced to do so by this Court. Defendant’s conduct will continue to cause
13 irreparable injury to consumers unless enjoined or restrained. Plaintiff is entitled
14 to preliminary and permanent injunctive relief ordering Defendant to cease their
15 false advertising, as well as disgorgement and restitution to Plaintiff and all Class
16 Members Defendant’s revenues associated with their false advertising, or such
17 portion of those revenues as the Court may find equitable.

18 **SECOND CAUSE OF ACTION**

19 **Violation of Unfair Business Practices Act**

20 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

21 56. Plaintiff incorporates by reference each allegation set forth above.

22 57. Actions for relief under the unfair competition law may be based on
23 any business act or practice that is within the broad definition of the UCL. Such
24 violations of the UCL occur as a result of unlawful, unfair or fraudulent business
25 acts and practices. A plaintiff is required to provide evidence of a causal
26 connection between a defendant's business practices and the alleged harm--that is,
27 evidence that the defendant's conduct caused or was likely to cause substantial
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1 injury. It is insufficient for a plaintiff to show merely that the defendant's conduct
2 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory
3 definition of unfair competition covers any single act of misconduct, as well as
4 ongoing misconduct.

5 UNFAIR

6 58. California Business & Professions Code § 17200 prohibits any
7 "unfair ... business act or practice." Defendant's acts, omissions,
8 misrepresentations, and practices as alleged herein also constitute "unfair"
9 business acts and practices within the meaning of the UCL in that its conduct is
10 substantially injurious to consumers, offends public policy, and is immoral,
11 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs
12 any alleged benefits attributable to such conduct. There were reasonably available
13 alternatives to further Defendant's legitimate business interests, other than the
14 conduct described herein. Plaintiff reserves the right to allege further conduct
15 which constitutes other unfair business acts or practices. Such conduct is ongoing
16 and continues to this date.

17 59. In order to satisfy the "unfair" prong of the UCL, a consumer must
18 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing
19 benefits to consumers or competition; and, (3) is not one that consumers
20 themselves could reasonably have avoided.

21 60. Here, Defendant's conduct has caused and continues to cause
22 substantial injury to Plaintiff and members of the Class. Plaintiff and members of
23 the Class have suffered injury in fact due to Defendant's misrepresentation
24 regarding the security of their accounts and their continued access to their own
25 funds. Thus, Defendant's conduct has caused substantial injury to Plaintiff and the
26 members of the Sub-Class.

27 61. Moreover, Defendant's conduct as alleged herein solely benefits
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1 Defendant while providing no benefit of any kind to any consumer. Such
2 deception utilized by Defendant convinced Plaintiff and members of the Class that
3 the they would have constant access to their funds and that their funds would be
4 secure. In fact, this was not the case for Plaintiff and other putative class members,
5 Defendant unfairly profited. Thus, the injury suffered by Plaintiff and the
6 members of the Sub-Class is not outweighed by any countervailing benefits to
7 consumers.

8 62. Finally, the injury suffered by Plaintiff and members of the Sub-Class
9 is not an injury that these consumers could reasonably have avoided. After
10 Defendant, falsely represented that interest, these consumers suffered injury in fact
11 due to Defendant's charging of higher interest to them. Defendant failed to take
12 reasonable steps to correct the damages that Plaintiff and class members were
13 suffering, failed to provide access to their accounts, and failed to even connect
14 them with a helpful customer service representative. As such, Defendant took
15 advantage of Defendant's position of perceived power in order to deceive Plaintiff
16 and the Class members to deposit their funds into RushCard accounts. Therefore,
17 the injury suffered by Plaintiff and members of the Class is not an injury which
18 these consumers could reasonably have avoided.

19 63. Thus, Defendant's conduct has violated the "unfair" prong of
20 California Business & Professions Code § 17200.

21 **FRAUDULENT**

22 64. California Business & Professions Code § 17200 prohibits any
23 "fraudulent ... business act or practice." In order to prevail under the "fraudulent"
24 prong of the UCL, a consumer must allege that the fraudulent business practice
25 was likely to deceive members of the public.

26 65. The test for "fraud" as contemplated by California Business and
27 Professions Code § 17200 is whether the public is likely to be deceived. Unlike
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1 common law fraud, a § 17200 violation can be established even if no one was
2 actually deceived, relied upon the fraudulent practice, or sustained any damage.

3 66. Here, not only were Plaintiff and the Class members likely to be
4 deceived, but these consumers were actually deceived by Defendant. Such
5 deception is evidenced by the fact that Plaintiff deposited his funds into his
6 account under the basic assumption that he would have regular access to the
7 account. Plaintiff's reliance upon Defendant's deceptive statements is reasonable
8 due to the unequal bargaining powers of Defendant and Plaintiff. For the same
9 reason, it is likely that Defendant's fraudulent business practice would deceive
10 other members of the public.

11 67. As explained above, Defendant deceived Plaintiff and other Class
12 Members by representing the higher interest as producing the services.

13 68. Thus, Defendant's conduct has violated the "fraudulent" prong of
14 California Business & Professions Code § 17200.

15 **UNLAWFUL**

16 69. California Business and Professions Code Section 17200, et seq.
17 prohibits "any unlawful...business act or practice."

18 70. As explained above, Defendant deceived Plaintiff and other Class
19 Members by representing the higher interest, falsely representing the interest rate..

20 71. Defendant used false advertising, marketing, and misrepresentations
21 to induce Plaintiff and Class Members to charge higher interest, in violation of
22 California Business and Professions Code Section 17500, et seq. Had Defendant
23 not falsely advertised, marketed or misrepresented the higher interest, Plaintiff and
24 Class Members would not have paid the higher interest. Defendant's conduct
25 therefore caused and continues to cause economic harm to Plaintiff and Class
26 Members.

27 72. These representations by Defendant are therefore an "unlawful"
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1 business practice or act under Business and Professions Code Section 17200 *et*
2 *seq.*

3 73. Defendant has thus engaged in unlawful, unfair, and fraudulent
4 business acts entitling Plaintiff and Class Members to judgment and equitable
5 relief against Defendant, as set forth in the Prayer for Relief. Additionally,
6 pursuant to Business and Professions Code section 17203, Plaintiff and Class
7 Members seek an order requiring Defendant to immediately cease such acts of
8 unlawful, unfair, and fraudulent business practices and requiring Defendant to
9 correct its actions.

10 **THIRD CAUSE OF ACTION**

11 **NEGLIGENCE (On behalf of the Class)**

12 74. Plaintiffs repeat, reallege, and incorporate by reference each of the
13 foregoing allegations as though fully set forth herein.

14 75. Defendants owed duties to Plaintiffs and the proposed Class as
15 RushCard account holders and paying customers to use reasonable care to protect
16 and secure customer funds and provide access to those monies.

17 76. Defendants breached their duties to Plaintiffs and the proposed
18 Class by failing to provide customers access to their RushCard funds for a
19 prolonged period of time causing hardship to the Plaintiffs and the proposed
20 classes.

21 77. Defendants breached their duties to Plaintiffs and the proposed
22 Class by failing to secure customer funds in that customers have noted
23 discrepancies in their account balances and funds missing.

24 78. Defendants failed to use reasonable care in communicating the
25 information about the Rushcard system update and restriction of access to
26 customer funds, as well as the safety and security of account funds.

27 79. Plaintiffs and the proposed Class justifiably relied upon the
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1 information supplied and representations made by Defendants, and, as a result,
2 engaged in business with Defendants and lost money.

3 80. As a direct and proximate result of Defendants' negligence,
4 Plaintiffs and the proposed Class were damaged in an amount to be proven at
5 trial.

6 **FOURTH CAUSE OF ACTION**

7 **FRAUD AND MISREPRESENTATION (On Behalf of the Class)**

8 81. Plaintiffs repeat, reallege, and incorporate by reference each of the
9 foregoing allegations as though fully set forth herein.

10 82. Defendants made material representations that were false, that
11 defendants knew were false or were reckless as to the veracity and made with the
12 inducement for Plaintiffs and the proposed Class to act upon.

13 83. Specifically, and as detailed above, Defendants represented that
14 RushCard customers would have complete access to their funds, except for a 5-
15 hour period during the early morning hours of October 12, 2015. Further,
16 Defendants represented that RushCard customer funds would be secure and
17 protected.

18 84. Plaintiffs and the proposed Class acted in reliance on the false,
19 material representations and omissions made by Defendants, which caused them
20 injury.

21 85. Plaintiffs and the proposed Class would not have deposited money
22 into their RushCard accounts if they had known that they would be denied access
23 to their funds for a prolonged period of time or if they had known that monies
24 would go missing from their accounts.

25 86. Defendants were aware that access to and protection of funds was a
26 material fact in inducing Plaintiffs and the proposed Class to give them money in
27 exchange for services and agreeing to the alleged contract.

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1 relief that this Court deems proper, as a result of their unfair, misleading and
2 unlawful conduct.

3 **SIXTH CAUSE OF ACTION**

4 **BREACH OF CONTRACT (On Behalf of the Class)**

5 94. Plaintiffs repeat, reallege, and incorporate by reference each of the
6 foregoing allegations as though fully set forth herein.

7 95. Plaintiffs, and each member of the proposed Class, formed a
8 contract with Defendants at the time they purchased a RushCard. The terms of
9 that contract include the promises and affirmations of fact made by Defendants
10 through their marketing materials and statements, as described above, which
11 constitute express warranties, became part of the basis of the bargain, and are
12 part of a standardized contract between Plaintiffs and the members of the
13 proposed Class on the one hand, and Defendants on the other.

14 96. In exchange for Defendants' promise of safety and convenience,
15 Plaintiffs and Class members paid monthly fees and other charges for their
16 RushCards.

17 97. Plaintiff and Class members gave consideration that was fair and
18 reasonable, and have performed all conditions, covenants, and promises required
19 to be performed.

20 98. Defendants breached the terms of this contract, including the
21 express warranties, with Plaintiffs and the proposed Class by denying customers
22 access to their funds and, thus, not providing a product and service which
23 provided the promised benefits as described above.

24 99. As a result of Defendant's breach of its contract and warranties,
25 Plaintiffs and the proposed Class have been damaged in an amount to be proven
26 at trial.

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SEVENTH CAUSE OF ACTION
CONVERSION (On Behalf of the Class)

100. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing allegations as though fully set forth herein.

101. Plaintiffs, and each member of the Class, deposited money into their RushCard accounts.

102. Defendants knowingly and intentionally exercised control over the monies belonging to Plaintiffs and Class members, retraining funds and denying Plaintiffs and Class members access to their funds.

103. Because of the unlawful restraint imposed by Defendants, the rights of Plaintiffs and the Class members in their funds were interfered with and their funds could not be used in the matter in which they desired.

104. Defendants also unlawfully imposed fees upon Plaintiffs and the Class members in connection with these restraints, depriving them of the use and control over their property.

105. As a result of the foregoing actions of Defendants, Plaintiffs and the proposed Class have been damaged in an amount to be proven at trial.

EIGHTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY (On Behalf of the Class)

106. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing allegations as though fully set forth herein.

107. Defendants owed a fiduciary duty to Plaintiffs and Class members to protect, secure and retain all monies that lawfully belonged to them.

108. As alleged herein, Defendants breached those fiduciary duties by restraining funds ds that they had no right to restrain and in unlawfully charging fees to Plaintiffs and Class members during this period of restraint.

109. Defendants breached those fiduciary duties by denying Plaintiffs

1 and Class members access to the funds that lawfully belonged to them.

2 110. Defendants breached those fiduciary duties by failing to secure and
3 protect all of the funds Plaintiffs and Class members had in their RushCard
4 accounts.

5 111. As a result of the foregoing actions of Defendants, Plaintiffs and the
6 proposed Class have been damaged in an amount to be proven at trial.

7 **MISCELLANEOUS**

8 112. Plaintiff and Class Members allege that they have fully complied with
9 all contractual and other legal obligations and fully complied with all conditions
10 precedent to bringing this action or all such obligations or conditions are excused.

11 **REQUEST FOR JURY TRIAL**

12 113. Plaintiff requests a trial by jury as to all claims so triable.

13 **PRAYER FOR RELIEF**

14 114. Plaintiff, on behalf of himself and the Class, requests the following
15 relief:

- 16 (a) An order certifying the Class and appointing Plaintiff as
17 Representative of the Class;
- 18 (a) An order certifying the undersigned counsel as Class Counsel;
- 19 (b) An order requiring Defendants, at their own cost, to notify all
20 Class Members of the unlawful and deceptive conduct herein;
- 21 (c) An order requiring Defendants to engage in corrective
22 advertising regarding the conduct discussed above;
- 23 (d) Actual damages suffered by Plaintiff and Class Members as
24 applicable or full restitution of all funds acquired from Plaintiff
25 and Class Members from the charging higher interest during
26 the relevant class period;
- 27 (e) Punitive damages, as allowable, in an amount determined by
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1 the Court or jury;

2 (f) Any and all statutory enhanced damages;

3 (g) All reasonable and necessary attorneys' fees and costs provided
4 by statute, common law or the Court's inherent power;

5 (h) Pre- and post-judgment interest; and

6 (i) All other relief, general or special, legal and equitable, to which
7 Plaintiff and Class Members may be justly entitled as deemed
8 by the Court.

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10 Dated: April 7, 2016

Respectfully submitted,

11 LAW OFFICES OF TODD M. FRIEDMAN , PC

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13 By: /s Todd. M. Friedman

14 TODD M. FRIEDMAN, ESQ.

15 Attorney for Plaintiff Calvin Smith
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